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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/002,781	10/29/2001	Andrew R. Ferlitsch	SLA1031	5371
52894	7590	09/14/2009	EXAMINER	
KRIEGER INTELLECTUAL PROPERTY, INC. PO Box 872438 Vancouver, WA 98687-2438			COLES, EDWARD L	
			ART UNIT	PAPER NUMBER
			2625	
			NOTIFICATION DATE	DELIVERY MODE
			09/14/2009	ELECTRONIC

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ANDREW R. FERLITSCH

Appeal 2009-002245
Application 10/002,781
Technology Center 2600

Decided: September 10, 2009

Before MAHSHID D. SAADAT, KARL D. EASTHOM,
and ELENI MANTIS MERCADER, *Administrative Patent Judges*.

SAADAT, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant appeals under 35 U.S.C. § 134(a) from a Final Rejection of claims 1-3, 5, and 7-17. Claims 4, 6, and 18 have been canceled. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

STATEMENT OF THE CASE

Appellant's invention relates to interleaving print jobs into other print jobs based on priority, size, or other factors in order to avoid prolonged delay. (Spec. 4:7-10).

Claim 1, which is illustrative of the claimed invention, reads as follows:

1. A method for interleaving print jobs, said method comprising:

receiving a plurality of original print jobs at a non-printer computing device;

partitioning at least one of said original print jobs into a plurality of sub-jobs with said non-printer computing device;

tagging said plurality of sub-jobs with an output mode code wherein said output mode code is the same for all sub-jobs originating from the same original print job; and

generating a combined print job, wherein said generating comprises interleaving said sub-jobs and any remaining original print jobs with said non-printer computing device.

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Rabjohns	US 5,697,040	Dec. 9, 1997
Utsunomiya	US 5,822,500	Oct. 13, 1998
Takeda	US 6,229,622 B1	May 8, 2001
Wanda	US 6,474,881 B1	Nov. 5, 2002 (filed Jun. 28, 2000)
Keeney	US 6,748,471 B1	Jun. 8, 2004 (filed Oct. 16, 2000)

Claims 1-3, 5, 9-11, 13, 16, and 17 stand rejected under 35 U.S.C. § 103(a) as being obvious over Takeda and Wanda.

Claim 7 stands rejected under 35 U.S.C. § 103(a) as being obvious over Takeda, Wanda, and Utsunomiya.

Claim 8 stands rejected under 35 U.S.C. § 103(a) as being obvious over Takeda, Wanda, and Keeney.

Claims 12, 14, and 15 stand rejected under 35 U.S.C. § 103(a) as being obvious over Takeda, Wanda, and Rabjohns.

Rather than repeat the arguments of Appellant or the Examiner, we make reference to the Brief and the Answer for their respective details. Only those arguments actually made by Appellant have been considered in this decision. Arguments that Appellant did not make in the Brief have not been considered and are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(vii).

ISSUE

With respect to the rejection of claims over the combination of Takeda and Wanda, Appellant argues (Br. 5) that the combination is improper since the intended function of each reference is destroyed when combined or modified with the other one. Appellant asserts that the methods disclosed in Takeda “alleviate the need for users who are printing out small quantities of printed matter to wait while a larger print job completes” whereas Wanda “groups together jobs to allow the printing of a plurality of jobs without interruption of the group job” (Br. 6). Appellant further contends that the claims do not involve “the generation of a combined print job comprising a plurality of user jobs,” but “the generation of a combined

print job comprising *interleaving* (emphasis added) sub-jobs and original print jobs" (Br. 7).

With respect to the obviousness rejections over Takeda and Wanda in view of Utsunomiya, Keeney, or Rabjohns, Appellant again argues that the combination of prior art is not proper and fails to teach or suggest the claimed feature of interleaving sub-jobs and original print jobs mentioned above (Br. 7-10).

Appellant's arguments present the following issue:

Has Appellant shown that the Examiner erred in finding that combining Takeda and Wanda is proper and if so, does the combination meet the claimed feature of interleaving sub-jobs and original print jobs?

FINDINGS OF FACT

The following findings of fact (FF) are relevant to the issue involved in the appeal.

Takeda

1. Takeda relates to printing a large quantity of printed matter when the printer is shared by a plurality of users without having a user wait an extended period of time. (Abstract.)

2. The printer performs printout based on the received data by storing the print data in relation to prescribed attributes in corresponding areas before printing in a prescribed amount on a per-area basis. (Col. 1, ll. 37-45.)

3. As shown in Figure 3A, a spool area is partitioned into a number of areas based on the number of users (col. 4, ll. 24-28) while the

number of pages printed for each spool area for each user is set (col. 4, ll. 40-41).

4. Figure 3B depicts a process for outputting all the print data from one spool area before incrementing the spool count to the next spool and printing the print data therefrom. (Col. 5, ll. 11-52.)

5. Takeda discloses that while the spool area is changed based on the number of pages for each and every user, printing can be carried out from all the spools without the printer being dominated by one user. (Col. 5, ll. 53-58.)

Wanda

6. Wanda provides for a print control on a server that prevents a print job from being mixed with grouping print job on the same printer even if they are spooled together. (Col. 2, ll. 45-52.)

7. Wanda depicts in Figure 7 an example of the data structure of the job information managed by the print server that includes, among others, a job ID for identifying the print job, a printer name, the data size, and a spool method for designating whether the print job is spooled using the client spooler or the server spooler. (Col. 8, l. 61 – col. 9, l. 4.)

PRINCIPLES OF LAW

1. Obviousness

The test for obviousness is what the combined teachings of the references would have suggested to one of ordinary skill in the art. *See In re Kahn*, 441 F.3d 977, 987-88 (Fed. Cir. 2006), *In re Young*, 927 F.2d 588, 591 (Fed. Cir. 1991) and *In re Keller*, 642 F.2d 413, 425 (CCPA 1981). The

initial burden of establishing reasons for unpatentability rests on the examiner. *In re Oetiker*, 977 F.2d 1443, 1446 (Fed. Cir. 1992).

The Examiner can satisfy this burden by showing some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness. *KSR Int'l. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007) (*citing In re Kahn*, 441 F.3d at 988 (Fed. Cir. 2006)).

2. *Burdens of Proof and Production*

In rejecting claims under 35 U.S.C. § 103, it is incumbent upon the Examiner to establish a factual basis to support the legal conclusion of obviousness. *See In re Fine*, 837 F.2d 1071, 1073 (Fed. Cir. 1988); *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992). Only if that burden is met, does the burden of going forward shift to the applicant. *In re King*, 801 F.2d 1324, 1327 (Fed. Cir. 1986); *In re Wilder*, 429 F.2d 447, 450 (CCPA 1970).

Once a *prima facie* case is established and rebuttal evidence is submitted, the ultimate question becomes whether, based on the totality of the record, the examiner carried his burden of proof by preponderance. *See In re Oetiker*, 977 F.2d at 1445. If the examiner fails to establish a *prima facie* case, the rejection is improper and will be overturned. *In re Fine*, 837 F.2d at 1074.

ANALYSIS

1. *35 U.S.C. § 103 Rejection over Takeda and Wanda*

The Examiner relies on Takeda for teaching “receiving a plurality of print jobs, partitioning print jobs into sub-jobs, [t]agging the sub-jobs with an output mode code, and interleaving the sub-jobs” (Ans. 18). The Examiner further relies on Wanda for teaching “the method of generating a

combined print job comprising a plurality of user jobs" (*id.*). With respect to the combination of the references, the Examiner asserts that Takeda prints each spool uninterrupted which benefits from the teachings in Wanda where combining the print job allows for interleaving spools or sub-jobs without interrupting each spool (*id.*).

We agree with the Examiner's characterization of each spool in Takeda as a sub-job which is actually dependent on the page number and specific to each user (FF 1-2). Takeda further discloses that the spool area is partitioned into a number of areas or spools based on the user and the desired page number (FF 3-4). These spools are then sent out for printing in any arrangement which allows spools from other users to be "interleaved" with those of another without the printer being dominated by one user (FF 5).

Further, we find the teachings of Wanda with regard to interrupting a print job and identifying the data structure of a job allow for identifying each sub-job or spool such that each print job may be identified and not mixed with other jobs (FF 6-7). Thus, as stated by the Examiner (Ans. 18-19), applying the teachings of Wanda to the print system of Takeda allows printing each job efficiently without affecting each spool or destroying the purpose of Takeda.

We also disagree with Appellant that the combination of Takeda and Wanda fails to teach or suggest generating a combined print job comprising interleaving sub-jobs and the original print job (Br. 7) since sending a series of spools belonging to different users meets the disputed limitation. As discussed above, Wanda identifies each print job even if a plurality of print jobs are spooled together (FF 7) which enhances interleaving spools in

Takeda and allows printing a small print job without having to wait for the completion of a large print job (FF 1, 5).

Appellant relies on the same argument, discussed above, for each independent claim 1, 13, 16, and 17 (Br. 6-7) and presents no separate argument for claims 2, 3, 5, and 9-11. However, since we find that Appellant failed to overcome the burden to show error in the Examiner's prima facie case, we sustain the Examiner's 35 U.S.C. § 103 rejection of claims 1-3, 5, 9-11, 13, 16, and 17.

2. 35 U.S.C. § 103 Rejection over Takeda, Wanda, in view of Utsunomiya, Keeney, or Rabjohns

With respect to claims 7, 8, 12, 14, and 15, Appellant relies on the same arguments made with respect to Takeda and Wanda and further argues that the combination of the applied prior art discloses the recited features in these claims (Br. 7-10). For the reasons discussed above, the 35 U.S.C. § 103(a) rejections of claim 7 over Takeda, Wanda, and Utsunomiya, of claim 8 over Takeda, Wanda, and Keeney, and of claims 12, 14, and 15 over Takeda, Wanda, and Rabjohns are sustained.

CONCLUSION

On the record before us, Appellant has failed to show error in the Examiner's finding that combining Takeda and Wanda is proper and the combination suggests the claimed feature of interleaving sub-jobs and original print jobs. In view of our analysis above, we sustain the 35 U.S.C. § 103(a) rejection of all the claims.

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ORDER

The decision of the Examiner rejecting claims 1-3, 5, and 7-17 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

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